

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

ATLANTA PHOTOGRAPHY, LLC

Plaintiff,

v.

IAN MARSHALL REALTY, INC.,
IAN MARSHALL, and
ALBERT JONES

Defendants.

DEMAND FOR JURY TRIAL

CIVIL ACTION NO.
1:13-cv-02330-AT

FIRST AMENDED COMPLAINT

Plaintiff, Atlanta Photography, LLC (“APLLC”), by and through its undersigned attorneys, states its claims against Defendants Ian Marshall Realty, Inc. (“IM Realty”), Ian Marshall (“Marshall”), and Albert Jones (“Jones”) (collectively, the “Defendants”), as follows:

PARTIES, JURISDICTION, AND VENUE

1. APLLC is a limited liability company organized and existing under the laws of the State of Delaware.

2. Defendant IM Realty is a corporation organized and existing under the laws of the State of Georgia, with its principal place of business at 303 Perimeter Center North, Suite 300, Atlanta, Georgia 30346. Defendant IM Realty, Inc. may be served through its registered agent, Ian Marshall, at 1417 Nerine Circle Dunwoody, Georgia 30338.

3. Defendant Marshall is an individual who, upon information and belief, resides in Dunwoody, Georgia. Defendant Marshall is the owner and Qualifying Broker of record for Defendant IM Realty. Defendant Marshall may be served at his place of business at Ian Marshall Realty, Inc., at 303 Perimeter Center North, Suite 300, Atlanta, Georgia 30346.

4. Defendant Jones is an individual who, upon information and belief, resides in Atlanta, Georgia. Jones is a real estate agent salesperson working for Defendant IM Realty. Defendant Jones may be served at his place of business at Ian Marshall Realty, Inc., 303 Perimeter Center North, Suite 300, Atlanta, Georgia 30346.

5. This action arises under the Federal Copyright Act of 1976, as amended, 17 U.S.C. § 101, *et seq.* This Court is vested with subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question jurisdiction) and 1338(a) (copyright jurisdiction).

6. This Court has personal jurisdiction over Defendants by virtue of their presence in this District and their transacting, doing, and soliciting business in this District.

7. Venue is proper under 28 U.S.C. §§ 1391 (b)(1), (c), and (d) and 1400(a).

FACTUAL BACKGROUND

8. Non-party Jennifer Sherrouse (“Photographer”) is a real estate salesperson licensed in the State of Georgia since 1994.

9. In 2007 and 2009, the Photographer took photographs of multiple properties so that she could display them to advertise her business.

10. On September 26, 2009, the Photographer published one of her photographs of property on her website at <http://www.lenoxcondos.com> (“Photo Website”), as shown below:



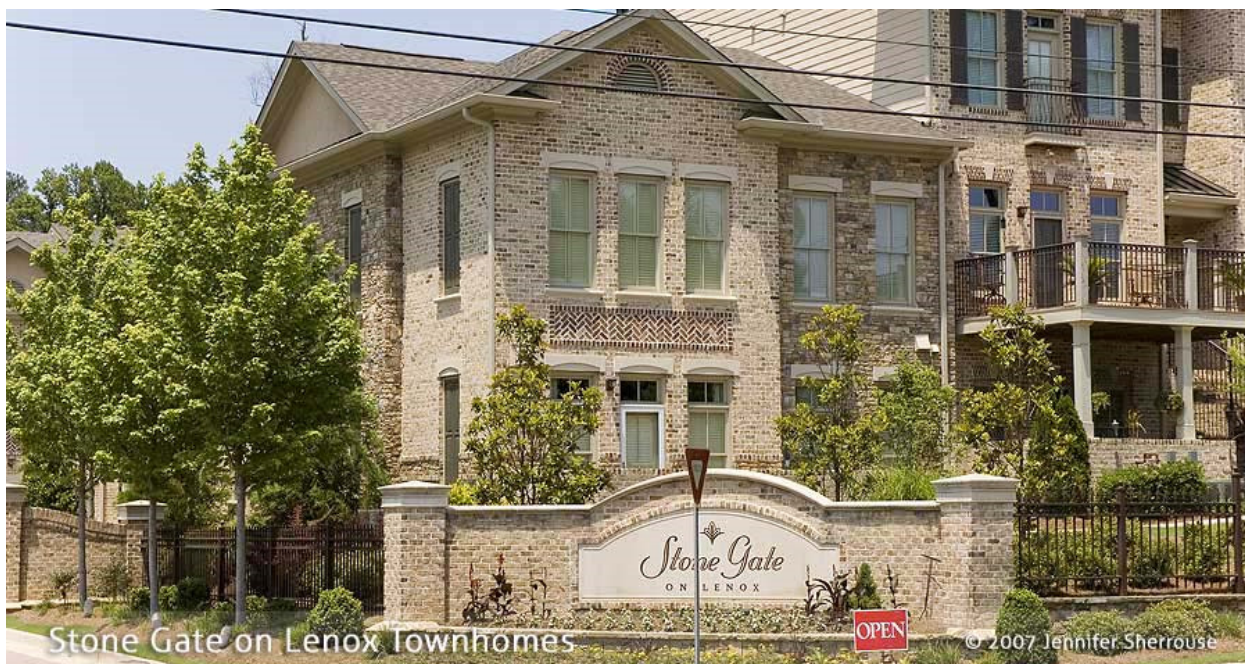
(the “Alexandria Photograph”). The Photographer posted her copyright notice of “© 2009 Jennifer Sherrouse” on the Alexandria Photograph.

11. On September 26, 2009, the Photographer published another of her photographs of property on the Photo Website, as shown below:




(the “Lenox Photograph”). The Photographer posted her copyright notice of “© 2009 Jennifer Sherrouse” on the Lenox Photograph.

12. On January 4, 2010, the Photographer published another of her photographs of property on the Photo Website, as shown below:



(the “Stone Gate Photograph”). The Photographer posted her copyright notice of “© 2007 Jennifer Sherrouse” on the Stone Gate Photograph.


13. In or around August 2010, the Photographer discovered that the Defendants had reproduced and were displaying the Alexandria Photograph, the Lenox Photograph, and the Stone Gate Photograph (collectively the “Photographs”) on the Defendants’ website at <http://buyandsellatl.com> (“IM Realty Website”), as shown below:







BUY & SELL ATL

- AGENT ALBERT JONES -

Welcome to Buy & Sell Atlanta! Buy & Sell ATL was developed by Albert Jones, in affiliation with Ian Marshall Realty. Our website has been designed to aid and ease the process of buying or selling a house in the Atlanta area. We strive to make the process of buying or selling a house the most accommodating and professional experience possible!



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Share    

QUICK SEARCH

City:
--- Select one ---


Bedrooms:

Bathrooms:


House: ☒ Condo: ☒

Price Range:


[Find It!](#)



651 ROBINSON AVE SE
ATLANTA, GA 30312
\$349,900
3 Beds - 3 Full | 1 Partial Baths



Alexandria Condos



Alexandria

The Alexandria is a condominium development that has a Buckhead address and offers a wide array of amenities. Completed in 2001, Alexandria is conveniently located within walking distance of Lenox Mall and Phipps Plaza. Alexandria is a securely gated, luxurious town home community with private courtyards. The Alexandria has elevators and expansive floor plans that include almost any option. Enticing amenities at Alexandria include hardwood flooring, granite countertops, stainless steel appliances, fire-place option, bedrooms with balconies, and even finished basements.

Check for available listings at [Alexandria](#)
or even [Buckhead Condos](#)

Leave a Reply

Name (required)

Mail (will not be published) (required)

Website

[submit comment](#)





BUY & SELL ATL

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QUICK SEARCH

City:

Bedrooms:

Bathrooms:

House: ☒ Condo: ☒

Price Range:

[Find It!](#)



5325 TIMBER RIDGE RD
 MARIETTA, GA 30068
\$499,500
 5 Beds - 3 Full | 1 Partial Baths



Roxboro Walk Condos



Roxboro Walk

Living at Roxboro Walk allows you to walk to Phipps and Lenox Malls. The building was Designed by Architects Caldwell and Cline and built by Grace Development Corp. Condos at Roxboro Walk feature spacious master retreats, 2 car garages, gourmet kitchens, and elevators. The community is gated for added safety and grounds are meticulously landscaped.

Check to see what is available at **Roxboro Walk**
or even Condos of Buckhead


Leave a Reply

Name (required)

Mail (will not be published) (required)

Website

[submit comment](#)



BUY & SELL ATL

- AGENT ALBERT JONES -

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QUICK SEARCH

City:


Bedrooms:

Bathrooms:


House: ☒ Condo: ☒

Price Range:

[Find It!](#)




651 ROBINSON AVE SE
 ATLANTA, GA 30312
\$349,900
 3 Beds - 3 Full | 1 Partial Baths




IAN MARSHALL
 REALTY

Welcome to Buy & Sell Atlanta! Buy & Sell ATL was developed by Albert Jones, in affiliation with Ian Marshall Realty. Our website has been designed to aid and ease the process of buying or selling a house in the Atlanta area. We strive to make the process of buying or selling a house the most accommodating and professional experience possible!



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[Condos & Lofts](#)
[In-Town](#)
[Greater Atlanta](#)
[Contact](#)

Stonegate On Lenox Condos



Stonegate on Lenox

These craftsman style townhomes feature ten foot ceilings and eight foot doors on the main floor. The stairs have wrought iron railing which really set off these areas of the homes. The built-in central vac makes it to where these homes are some of the coziest in the area without all the hassles that come with the larger units that service multiple homes. The built-in sound system that comes stock with these homes will make entertaining very easy. As for the kitchen: Sub Zero, Dacor, Milar, & Jen-Aire appliances come standard. The master suite comes stock with a fireplace. The unfinished basement is great because it leaves room for you the homeowner to do what you want with it. As for the master bath, there is a double vanity and garden tub with a separate shower. All of these amenities come standard, and are what separate the Stonegate on Lenox from the rest of the townhomes in the Buckhead area.

Check to see what is available at the **Stonegate on Lenox**
 or even **Condos of Buckhead**

Leave a Reply

Name (required)

Mail (will not be published) (required)

Website

14. The Defendants cropped the Photographs to remove the copyright notice from each of the Photographs before displaying them on the IM Realty Website.

15. The Defendants used the Photographs to advertise IM Realty's real estate business.

16. On October 28, 2010, the Photographer, through her attorney, sent a letter to Jones giving notice that the reproduction, display, and distribution of the Photographs on the IM Realty Website was unauthorized and asking Jones to cease any use of the Photographs.

17. On January 20, 2011, the Photographer, through her attorney, sent a letter to Marshall and IM Realty giving notice that the reproduction, display, and distribution of the Photographs on the IM Realty Website was unauthorized and asking Marshall and IM Realty to cease any use of the Photographs

18. As of the date of the filing of this lawsuit, the Defendants continued to reproduce, display, and distribute the cropped Photographs at:

- <http://buyandsellatl.com/wp-content/uploads/2010/08/roxboro-walk.jpg>;
- <http://buyandsellatl.com/wp-content/uploads/2010/08/roxboro-walk-150x150.jpg>;

- <http://buyandsellatl.com/wp-content/uploads/2010/08/stonegate-on-lenox-300x155.jpg>;
- <http://buyandsellatl.com/wp-content/uploads/2010/08/stonegate-on-lenox-300x155-150x150.jpg>;
- <http://buyandsellatl.com/wp-content/uploads/2010/07/alexandriacondos-300x1581.jpg>; and
- <http://buyandsellatl.com/wp-content/uploads/2010/07/alexandriacondos-300x1581-150x150.jpg>.

19. Marshall knew of Jones and IM Realty's possession of specific infringing material but failed to purge such material, therefore contributing to direct infringement by Jones and IM Realty, making him contributorily liable for the infringements.

20. As owner and Qualifying Real Estate Broker of IM Realty, Marshall had both the legal right and the ability to stop Jones and IM Realty's direct infringement of the Photographs.

21. As owner and Qualifying Real Estate Broker of IM Realty, Marshall gained a direct financial benefit from Jones' and IM Realty's direct infringement of the Photographs, making him vicariously liable for the infringements.

22. The Photographs in perspective, orientation, positioning, lighting and other details are entirely original, distinctive, and unique. As such, the Photographs are subject matter protectable under the Copyright Act.

23. On information and belief, the Defendants had access to the Photographs through the Photo Website.

24. Neither the Photographer nor APLLC ever authorized any of the Defendants to reproduce, display, or distribute the Photographs.

25. The Photographer complied with all respects with the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*, as amended, and all other laws and regulations governing copyrights and secured the exclusive rights and privileges in and to the copyrights for the Photographs.

26. The Register of Copyrights for the U.S. Copyright Office issued to the Photographer two Certificates of Registration for the copyrights to the Photographs, numbers VA 1-780-878, effective July 23, 2010, and VA 1-788-164, effective July 23, 2010 as shown below:

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante
Register of Copyrights, United States of America

Registration Number
VA 1-780-878

Effective date of
registration:
July 23, 2010

Title

Title of Work: www.jennifersherrouse.com, Group Registration/Published Photos, 243 Photos,
Published 01/04/09 - 12/30/09

Contents Titles: /58sheridan/source/58_sheridan_01.jpg, 9/26/09;
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Completion/Publication

Year of Completion: 2009

Date of 1st Publication: January 4, 2009

Nation of 1st Publication: United States

Author

■ Author: JENNIFER SHERROUSE

Author Created: photograph(s)

Work made for hire: No

Citizen of: United States

Domiciled in: United States

Year Born: 1973

Copyright claimant

Copyright Claimant: JENNIFER SHERROUSE

P.O. Box 12257, Atlanta, GA, 30355

Certification

Name: JENNIFER SHERROUSE

Date: July 21, 2011

Correspondence: Yes

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Maria A. Pallante

Register of Copyrights, United States of America

Registration Number
VA 1-788-164

Effective date of
registration:
July 23, 2010

Title

Title of Work: www.jennifersherrouse.com, Group Registration / 148 Published photos 01/04/2010-04/26/2010

Contents Titles: alhambra/alhambra_condos.jpg, 4/02/10; alstonplace/alston_place.jpg, 4/02/10; aramore/aramore.jpg, 4/03/10; astoria/photos/astoria.jpg, 4/03/10; barclay/barclay.jpg, 4/09/10; bradford/thebradford.jpg, 4/03/10; briary/thebriary.jpg, 4/15/10; brooksidegardenhills/brookside_garden_hills.jpg, 4/03/10; brookwodplace/brookwoodplace.jpg, 4/03/10; brownstonesathonour/brownstones.jpg, 4/03/10; buckheadforestmews/buckhead_forest_mews.jpg, 1/21/10; castlewood/castlewood.png, 4/25/10; buckheadvillagelofts/buckheadvillagelofts.jpg, 4/03/10; chastainpark/chastainpark.png, 4/25/10; chastainplace/chastainplace.jpg, 4/17/10; concorde/concorde.jpg, 4/03/10; dovehill/dovehill.jpg, 4/17/10; exeter/exeter.jpg, 4/18/10; glenridgeoaks/glenridgeoaks.jpg, 4/25/10; haltenhall/haltenhall.jpg, 4/03/10; heatherbrooke/heatherbrooke.jpg, 4/03/10; heritageplace/heritageplace.jpg, 4/04/10; images/promo05.jpg, 2/24/10; images/promo06.jpg, 2/24/10; ivys/ivys.jpg, 4/03/10; kingsboropark/kingsboro.jpg, 4/04/10; kingsboropark/kingsboro-park.jpg, 2/21/10; kingswood/kingswood.png, 4/25/10; lechateau/photos/awning-NEW.jpg, 1/26/10; lechateau/photos/balcony.jpg, 1/26/10; lechateau/photos/breakfast.jpg, 1/26/10; lechateau/photos/building-new.jpg, 1/26/10; lechateau/photos/DR.jpg, 1/26/10; lechateau/photos/entry.jpg, 1/26/10; lechateau/photos/guest-ba.jpg, 1/26/10; lechateau/photos/guest-br.jpg, 1/26/10; lechateau/photos/kitchen-l.jpg, 1/26/10; lechateau/photos/kitchen-r.jpg, 1/26/10; lechateau/photos/LR.jpg, 1/26/10; lechateau/photos/master-ba2.jpg, 1/26/10; lechateau/photos/master-ba.jpg, 1/26/10; lechateau/photos/master-br.jpg, 1/26/10; lechateau/photos/powder.jpg, 1/26/10; lenoxcondos/townhouses/3113lenox/3113lenox-.jpg, 1/04/10; lenoxcondos/townhouses/alexandria/alexandria-.jpg, 1/04/10; lenoxcondos/townhouses/burkeshire/burkeshire-.jpg, 1/04/10; lenoxcondos/townhouses/heatherbrooke/heatherbrooke-.jpg, 1/04/10; lenoxcondos/townhouses/kingsboropark/kingsboro-park-.jpg, 1/04/10; lenoxcondos/townhouses/overlook/overlook-.jpg, 1/04/10; lenoxcondos/townhouses/parkateaspaces-.jpg, 1/04/10; lenoxcondos/townhouses/phipps-gate-.jpg, 1/04/10;

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Author

■ Author: JENNIFER SHERROUSE

Author Created: photograph(s)

Work made for hire: No

Citizen of: United States

Domiciled in: United States

Year Born: 1973

Copyright claimant

Copyright Claimant: JENNIFER SHERROUSE

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Rights and Permissions

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Certification

Name: JENNIFER SHERROUSE

Date: September 20, 2011

Correspondence: Yes

27. On December 23, 2011, the Photographer transferred in writing the copyrights in the Photographs to APLLC, recorded by the U.S. Copyright Office in document V3602 D618 P1-2. Accordingly, APLLC is the copyright owner and proprietor of the right, title, and interest in and to the copyright in the Photographs. 17 U.S.C. § 201.

FIRST CAUSE OF ACTION

Copyright Infringement – 17 U.S.C. §§ 101 *et seq.*

28. APLLC re-alleges and incorporates by reference paragraphs 1 through 27 above.

29. The Defendants violated APLLC's exclusive rights granted in 17 U.S.C. § 106, specifically its exclusive rights to: (1) reproduce the copyrighted work in copies; (2) prepare derivative works based on the copyrighted work; (3) distribute copies of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending; and (4) display the copyrighted work publicly.

30. As the Defendants began to reproduce, display, and distribute the Alexandria Photograph on July 19, 2010, the Lenox Photograph on July 28, 2010, and the Stone Gate Photograph on July 28, 2010, all claims of infringement are within the three-year statute of limitations period pursuant to 17 U.S.C. § 507(b).

31. As a direct and proximate result of their wrongful conduct, the Defendants have realized and continue to realize profits and other benefits rightfully belonging to APLLC for the Photographs. Accordingly, APLLC is entitled to and seeks an award of actual damages and profits pursuant to 17 U.S.C. § 504(b).

32. In the alternative, APLLC is entitled to and seeks statutory damages for the Defendants' infringement of the Lenox Photograph and the Stone Gate Photograph, including attorneys' fees and costs, pursuant to 17 U.S.C. §§ 504(c)(1) and 505.

33. The infringement by the Defendants was willful and performed with knowledge that the reproduction, display, and distribution of the Lenox Photograph and the Stone Gate Photograph was unauthorized; APLLC is therefore entitled to the recovery of enhanced statutory damages pursuant to 17 U.S.C. 504 (c)(2).

SECOND CAUSE OF ACTION

Digital Millennium Copyright Act Violations – 17 U.S.C. §§ 1201 *et seq.*

34. APLLC re-alleges and incorporates by reference paragraphs 1 through 27 above.

35. The copyright notice on each of the Photographs constitutes copyright management information pursuant to 17 U.S.C. § 1202(c)(2), (3) and (7).

36. Upon information and belief, the Defendants, without the authority of the Photographer, APLLC, or the law, intentionally removed the copyright notices and distributed the Photographs, knowing that the copyright notices had been removed or altered, knowing or having reasonable grounds to know that such removal or alteration would induce, enable, facilitate, or conceal a copyright infringement, in violation of 17 U.S.C. § 1202(b).

37. As a direct and proximate result of the Defendants' wrongful conduct, APLLC has suffered damages and so is entitled to the remedies set forth under 17 U.S.C. § 1203.

38. Specifically, APLLC is entitled to and seeks actual damages pursuant to 17 U.S.C. § 1203(c)(2).

39. In the alternative, APLLC is entitled to and seeks statutory damages pursuant to 17 U.S.C. § 1203(c)(3)(B), and costs of litigation and attorneys' fees pursuant to 17 U.S.C. § 1203(b)(4-5).

PRAYER FOR RELIEF

WHEREFORE APLLC prays that this Honorable Court:

1. Order that the Defendants' unauthorized conduct violates APLLC's rights under the Federal Copyright Act at 17 U.S.C. §101, et seq.;

2. Order the Defendants to account and pay to APLLC all profits and damages in such amount as may be found pursuant to 17 U.S.C. § 504(b) (with interest thereon at the highest legal rate) for the Defendants' infringement of the Photographs; alternatively, maximum statutory damages in the amount of \$30,000 for each infringement of the Lenox Photograph and the Stone Gate Photograph pursuant to 17 U.S.C. § 504 (c)(1); or such other amount as may be proper pursuant to 17 U.S.C. § 504;
3. Award APLLC maximum statutory damages in the amount of \$150,000 for each of the Defendants' infringements of APLLC's copyrights in the Lenox Photograph and the Stone Gate Photograph pursuant to 17 U.S.C. § 504 (c)(2); or such other amount as may be proper pursuant to 17 U.S.C. § 504;
4. Award APLLC actual damages suffered and profits for each violation of 17 U.S.C. § 1202 (a) and (b), pursuant to 17 U.S.C. § 1203(c)(2); or such other amount as may be proper pursuant to 17 U.S.C. § 1203;
5. Award APLLC maximum statutory damages in the amount of \$25,000 for each violation of 17 U.S.C. § 1202 (a) and (b) pursuant to 17 U.S.C. § 1203(c)(3)(B); or such other amount as may be proper pursuant to 17 U.S.C. § 1203;

6. Order the Defendants to pay APLLC its costs of litigation and reasonable attorneys' fees in this action, pursuant to 17 U.S.C. § 505 and 17 U.S.C. § 1203;
7. Order the Defendants to deliver to APLLC all copies of the Photographs and all other materials containing such infringing copies of the Photographs in their possession, custody or control;
8. Order the Defendants, their agents, and servants to be enjoined during the pendency of this action and permanently from infringing the copyrights of APLLC in any manner and from reproducing, distributing, displaying, or creating derivative works of the Photographs; and
9. Order such other and further relief as this Honorable Court deems just and equitable.

APLLC demands a jury trial on all of the foregoing counts.

This 21st day of March, 2014.

Respectfully submitted,

**LAW OFFICE OF CAROLYN E.
WRIGHT, LLC**

s/ Evan A. Andersen

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1.B

Counsel for APLLC hereby certifies that this pleading was prepared in Times New Roman font, 14 point, in compliance with Local Rule 5.1.B.

This 21st day of March, 2014.

Respectfully submitted,

**LAW OFFICE OF CAROLYN E.
WRIGHT, LLC**

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